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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

LEWIS J. RITACCO and JERROLD ORLAND CONAWAY,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONERS' REPLY BRIEF

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ARGUMENT

The Government in their Brief in Opposition admit that Lanns could identify as his, only a 1923 Denver $20.00 gold piece and two rolls of 1960 Philadelphia small date pennies worth in the aggregate about $400.00, a sum far below the jurisdictional amount of $5,000.00. It is manifestly fallacious for the Government to argue that positive identification of these three items plus the possession in the defendants of coins of the *same kind* as those stolen from Lanns furnishes sufficient evidence from which the jury could conclude that over $5,000.00 worth of stolen property had been transported in interstate commerce. Positive identification by Lanns of three specific items is in no way evidence that other distinct material which he could not identify was his prop-

erty. The Government by the use of the phrase "same kind" seeks to avoid the pitfall of "similarity." However, no matter how carefully the Government words the equation, the test they seek to employ is "similarity." The 9th Circuit in *Karn v. United States,* 158 F.2d 568 (C.A. 9), held that identification of currency could not be made on the basis of "similar property" or property that "looks like" stolen property. The 8th Circuit held in the instant case that identification could be established on the basis of "similarity." The conflict is not resolved by arguing that in the *Karn* case there was no positive identification of *any* of the stolen currency. This distinction in no way resolves the different tests employed by the two Circuits.

CONCLUSION

It is most respectfully submitted that the petition for a writ of certiorari be granted so that the conflict referred to can be finally resolved.

Respectfully submitted,

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